

**ONTARIO ENERGY BOARD**

IN THE MATTER OF the Ontario Energy Board Act 1998, S.O.1998, c.15,  
(Schedule B);

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for  
an order or orders approving the clearance or disposition of amounts recorded in  
certain deferral or variance accounts.

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**WRITTEN ARGUMENT**

**OF THE CONSUMERS COUNCIL OF CANADA**

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**I Introduction and Overview**

1. Enbridge Gas Distribution Inc. (EGD) applied for approval the disposition of balances in certain deferral or variance accounts. In a Decision and Order on the Settlement Agreement, dated September 17, 2012, the Ontario Energy Board (Board) accepted a Settlement Agreement which resolved most of the issues.

2. The Settlement Agreement left three issues unresolved. One of those issues, related to the 2011 Earnings Sharing Mechanism Deferral Account (ESMDA), was the allocation of costs between regulated gas storage activities and unregulated gas storage activities for the purposes of the 2011 earnings sharing calculation. That issue was subsequently disposed of, and is not addressed herein.

3. The second issue, related to the 2011 ESMDA, was the amount of the provision for uncollectibles for the purposes of the 2011 earnings sharing calculation. With respect to that issue, the Consumers Council of Canada (CCC) adopts the submissions of Board Staff.

4. The one remaining unresolved issue is with respect to the 2011 Transactional Services Deferral Account (TSDA). The unresolved issue is whether EGD has treated the upstream transportation optimization revenues appropriately in 2011 in the context of EGD's existing IRM agreement.

5. These are the submissions of the CCC on that remaining unresolved issue.
6. The question of whether EGD has treated its upstream transportation optimization revenues appropriately is important less because of the amount of money involved, which is not large, than because of the treatment of a similar issue in a recent decision of the Board dealing with Union Gas Limited (Union).
7. It is important that there be regulatory consistency in the analysis of the appropriate treatment of the same upstream transportation optimization activities, as between Union and EGD. It is important, in other words, that the Board reach the same conclusion on similar facts. At the same time, however, it is equally important that, in fairness to EGD, any differences between its activities and those of Union be acknowledged and not simply glossed over.
8. We will begin with a review of the relevant facts. We will then consider those facts in the context of the Board's decision in the Union proceeding. We will then analyse whether there are differences between EGD's and Union's activities such that EGD's upstream transportation optimization activities, and the revenues flowing therefrom, should be treated differently.

## **II Facts**

9. EGD optimized its upstream transportation portfolio in three ways. The first was base exchanges. The second was STS RAM credit transactions. The third was capacity releases.<sup>1</sup>
10. The evidence was that base exchanges had formed part of EGD's transactional service business for some time. The revenue flowing from those base exchanges is not, for the CCC, an issue.
11. STS RAM credits are available to EGD under TransCanada's RAM credit program. They are available in circumstances where EGD does not fully utilize 100% of its contracted capacity under its STS contract. The credits can be used by EGD to offset the cost of

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<sup>1</sup> Transcript, Vol. 1, p. 11.

any interruptable service they contract for. If used in that way, they result in a reduction in gas costs.<sup>2</sup>

12. In the alternative, the credits can be transferred, to be used by others. The revenue derived from that is characterized by EGD as transactional services revenue.<sup>3</sup>

13. Capacity releases, although structured somewhat differently from the STS RAM credit transactions, also take advantage of TransCanada's RAM credit program. EGD is able to engage in capacity releases as a result of its flexibility in being able to move some gas into storage during the summer.<sup>4</sup>

14. The gains associated with the STS RAM credits and the capacity releases were recorded by EGD in the TDSA. The total amount was approximately \$3.8 million. That amount was split between the ratepayers and the shareholders on a 75/25 basis.

15. If the gains associated with the STS RAM and capacity releases were treated not as transactional services but as gas cost reductions, they would have been recorded in the PGVA, subject to an identical sharing formula.

16. The issue, reduced to its essence, is whether the STS RAM credit transactions and capacity releases should be characterized as gas cost transactions or transactional services.

### **III The Union Gas Limited Decision**

17. In its Decision and Order on Preliminary Issue, dated November 19, 2012, in EB-2012-0087 (the "Union Decision"), the Board considered how to properly characterize Union's use of TransCanada's FT-RAM program.

18. The Board found that "Union generated revenue by creating unabsorbed demand charges or UDC on a planned basis and then either concurrently assigned or exchanged its FT contracts on the TCPL Mainline to monetize the FT-RAM credit value of the unused FT contracts." The Board then concluded that the "effect of this activity is that higher upstream

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<sup>2</sup> Transcript, Vol. 1, p. 9

<sup>3</sup> Transcript, Vol. 1, p. 10

<sup>4</sup> Transcript, Vol. 1, p. 11

transportation costs that are paid for by Union's customers have been substituted with lower cost upstream transportation arrangements."<sup>5</sup>

19. The Board's conclusion was that Union could not profit from the procurement of gas supply for its customers. The Board held that "Union's upstream transportation FT-RAM optimization revenues are gas cost reductions, and are properly considered Y-factor items in accordance with Union's IRM Framework."<sup>6</sup>

20. The Board did, however, decide that it was appropriate that Union receive a 10% incentive for having generated the revenues.<sup>7</sup>

#### **IV Analysis**

21. The CCC acknowledges that the scale of Union's use of its RAM credits, and its deliberate creation of unabsorbed demand charges, makes Union's activities in the upstream transportation market superficially different from those of EGD. However, while the deliberate distortion of its gas purchase arrangements was a factor in the Union Decision, the critical feature was that the transactions were, at their core, part of the gas supply plan.

22. What EGD's activities have in common with those of Union is, to paraphrase the words of the Board in the Union Decision, that they are clearly reductions to upstream transportation costs, that result in an overall reduction to the cost of achieving EGD's gas supply plan.

23. As was the case with Union, those reductions are subject to pass-through treatment under EGD's IRM framework.

24. The Board, in the Union Decision, allowed Union to retain 10% of the gas cost reductions as an incentive to achieve those cost reductions. Were the Board to adopt the same analytical framework in the case of EDG as it did in the Union case, then the difference in the amount allocated to ratepayers would be the difference between the 75% allocated, under the

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<sup>5</sup> *Decision and Order on Preliminary Issue*, November 19, 2012, EB-2011-0087 ("Union Decision"), p. 26

<sup>6</sup> Union Decision, p. 27

<sup>7</sup> Union Decision, p. 31

current arrangements, and the 90% allowed in the Union Decision. The difference would be approximately \$570,000.<sup>8</sup>

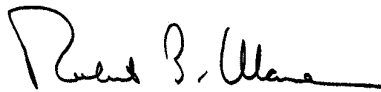
## **V Conclusion**

25. CCC submits that EGD's upstream transportation optimization activities should properly be characterized as gas cost reductions, that the reductions should be recorded in the PGVA, and that 90% of the reductions should be allocated to ratepayers.

## **VI Costs**

26. The CCC asks that it be awarded 100% of its reasonably-incurred costs.

All of which is respectfully submitted.



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<sup>8</sup> Transcript, Vol. 1, p. 18